

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. _____

SUBJECT:

FOR: FEBRUARY 2004 BOARD MEETING

TO BE PRESENTED BY: Caroline Garber, AM/7

SUMMARY: This request seeks adoption of three modifications to the proposed revisions to Chapter NR 445, Control of Hazardous Pollutants. The proposed modifications address concerns raised by the Senate Environment and Natural Resources Committee and the Assembly Natural Resources Committee.

The first modification relates to the process for determining the need to regulate additional contaminants. The second relates to the regulation of diesel generators. The third addresses the applicability of NR 445 emission limits to agricultural facilities and livestock operations.

The revisions to NR 445 were adopted by the Natural Resources Board in April 2003.

RECOMMENDATION: Adopt the proposed modifications to the revisions to Ch. NR 445.

LIST OF ATTACHED MATERIALS:

No <input checked="" type="checkbox"/>	Fiscal Estimate Required	Yes <input type="checkbox"/>	Attached
No <input checked="" type="checkbox"/>	Environmental Assessment or Impact Statement Required	Yes <input type="checkbox"/>	Attached
No <input type="checkbox"/>	Background Memo	Yes <input checked="" type="checkbox"/>	Attached

APPROVED:

/s/
Bureau Director, Lloyd L. Eagan

2/6/04
Date

/s/
Administrator, Al Shea

2/6/04
Date

/s/
Secretary, Scott Hassett

2/9/04
Date

cc: Annmarie Kutzke - AD/5
Carol Turner - LS/5
R. Eckdale - AM/7 (20)
Caroline Garber - AM/7

L. Eagan - AM/7

STAFF REVIEW - DNR BOARD AGENDA ITEM

REMINDER

Have the following questions been answered under the summary section of this form?

- Why is the rule needed?
- What are the significant changes?
- What are the key issues/controversies?
- What was the last action of the Board?

LIST OF ATTACHED REFERENCE MATERIAL REQUIRED FOR RULE PROPOSALS:

Hearing authorization:

Background memo (if needed)*

Fiscal Estimate

Environmental Assessment (if needed)

Rule

Final adoption:

Background Memo (if needed)*

Response Summary

Fiscal Estimate

Environmental Assessment (if needed)

Rule

- * If all the questions listed in the REMINDER section above can be adequately summarized on the Green Sheet (and a second sheet if needed), the Background Memo may be omitted.

Unit	Reviewer	Date	Comments
Environmental Analysis and Review			
Management and Budget			
Legal Services -Program Attorney -Carol Turner			
Other (if applicable)			

DATE: February 6, 2004

FILE REF: 4533

TO: Members of the Natural Resources Board

FROM: Scott Hassett – AD/5

SUBJECT: Recommendation for Adoption of Modifications to the Ch. NR 445 Rule Revision Package

BACKGROUND

The Natural Resources Board adopted the proposed revisions to Ch. NR 445 and related regulations pertaining to the regulation of hazardous air contaminants (Order AM-34-02) on April 22, 2003. The Senate Environment and Natural Resources Committee and the Assembly Natural Resources Committee held a joint hearing on the rule order on May 22, 2003 and, on May 28th, sent letters requesting that the Department make unspecified modifications to the rule package. The Department agreed to consider modifications and staff met with legislative staff on June 11th to discuss issues that were raised in the hearing testimony.

On October 3, 2003, the committee chairs sent a letter to the Department requesting specific modifications to Order AM-34-02. A copy of the letter is attached. The chairs requested modifications in three areas: the proposed procedures for determining the need to expand the list of hazardous air contaminants in the rule, the treatment of diesel generators, and the potential for regulation of malodorous emissions from agricultural facilities and livestock operations.

Department staff appeared, for information only, at the October meeting of the Natural Resources Board to review the requested modifications and a suggested response. Since then, Department staff met several times with the committee chairs and other interested parties.

Department staff are recommending modifications in each of the three areas. The recommended modification for the listing procedure is the same as suggested at the October 2003 Board meeting. The recommended modifications for diesel generators and emissions from agricultural waste differ from the October suggestions.

PROPOSED MODIFICATIONS

Process for determining the need to regulate additional contaminants

In their October 3rd letter, the chairs of the Senate Environment and Natural Resources Committee and the Assembly Natural Resources Committee requested:

- The application of a risk matrix to all the chemicals proposed for addition to NR 445 in this rule making. The matrix should include an identification of known sources in Wisconsin that release the contaminant, an analysis of the expected population exposure and associated risk, and an evaluation of alternative control strategies.
- The inclusion of the risk matrix into the rule for future additions to NR 445, and
- A review of all currently listed chemicals against the risk matrix before any additional chemicals are added to NR 445.

Staff recommend the following proposed modifications to NR 445:

- The inclusion in the rule of three criteria that the department would consider in future rule making:
 - a. an evaluation of sources in Wisconsin that release or are likely to release the contaminant,
 - b. an evaluation of the expected population exposure to the contaminant and related risks, and

- c. an evaluation of alternative control strategies that includes consideration of costs.
- The deletion from this round of rule making of 41 substances that had been proposed for addition to NR 445, or about a third of the originally proposed additions. These substances would need to be reviewed against the criteria listed above before being added to NR 445.
- The requirement that those new substances that are being added to NR 445, about 2/3 of the originally proposed additions, would be reviewed against the new criteria prior to any future additions to the list of regulated substances. If they did not meet the criteria, they would be removed from NR 445.

The proposed listing criteria are consistent with 2003 Wisconsin Act 118, the Job Creation Act.

The 41 substances proposed for deletion from this rule-making are ones that were identified as having a low probability for air emissions in Wisconsin by the UW-Extension Solid and Hazardous Waste Education Center and Kestrel Management Consultants. They are either pharmaceuticals/medicinals or are not expected to be in products used or expected to be emitted by industry in Wisconsin, according to a review of a national database of 250,000 Material Safety Data Sheets. A list of these substances is attached to this memo.

Diesel Generators

The committee chairs requested that the proposed regulations pertaining to diesel generators be removed, stating that they believe them to be unnecessary in light of existing and pending federal regulations.

The recommended modification creates an exemption from NR 445 emission limitations and permit requirements for new and existing diesel generators that meet the federal Tier 2 emission standards and, after December 2010, the equivalent of the proposed federal Tier 4 emission standards. It also extends the compliance deadline for any non-Tier 2 existing engine if the owner certifies that the engine will be retired no later than December 31, 2010.

These modifications provide an incentive for owners of diesel generators to purchase engines that meet certain federal emission standards rather than retrofit their existing engines. This will provide a greater level and certainty of emission reductions. The modifications also provide owners with the opportunity to reduce their regulatory obligations.

Exemption for Agriculture and Livestock Operations

The committee chairs also requested that agricultural facilities and livestock operations be exempted from NR 445 and the air permitting requirements.

The recommended modifications provide for a three-year exemption from NR 445 and from permitting requirements for emissions associated with agricultural waste. The exemptions apply to existing operations and to those that start up or expand during the three-year period. At the end of the three-year period, these sources will have 12 months to come into compliance with NR 445. Sources that start up or are modified after the three-year exemption period will have to comply upon start up. Best management practices, approved by the Department, are being added to NR 445 as a compliance option. The modified rule also contains two notes. One directs agricultural industry to the appropriate sections of the code. The second notes that NR 445 was not developed for the purpose of regulating emissions associated with agricultural waste and that the Department believes that best management practices are the preferred approach to controlling these emissions.

The rationale for providing a three-year exemption is that there are initiatives at both the federal and state levels to develop a regulatory approach for emissions associated with agricultural waste. USEPA and the

industry are developing a consent agreement regarding the development of emission estimation methodologies. The Wisconsin Agricultural Siting Committee has recommended the development of best management practices to address environmental issues, including air. It is anticipated that both of these initiatives will be completed within three years.

RECOMMENDATION

It is recommended that the Natural Resources Board adopt the proposed modifications to Board Order AM-34-02, revisions to Chapters NR 445 and related chapters.

Attachments

1. List of 41 Chemicals Proposed for Removal from NR 445
2. Proposed Modifications to Board Order AM-34-02
3. October 3, 2003 letter to Secretary Hassett from Senator Kedzie and Representative Johnsrud